

**ANNEXATION AGREEMENT**

[McCarty Road, LLC]

**THIS ANNEXATION AGREEMENT** (this "Agreement") is made and entered into this 13th day of March, 2006, by and between the CITY OF PORT ST. LUCIE, a municipal corporation of the State of Florida (the "City") and McCarty Road, LLC a Florida limited liability company ("McCarty").

**WITNESSETH**

**WHEREAS**, the City is a Florida municipal corporation located within St. Lucie County, Florida; and

**WHEREAS**, McCarty owns certain real property in unincorporated St. Lucie County, Florida, as described in Exhibit "A", attached hereto and made a part hereof (the "Property"); and

**WHEREAS**, approximately 3,837 feet of the Property's boundary is coterminous with a boundary of the City; and

**WHEREAS**, the Property is therefore adjacent and contiguous to the municipal boundary of the City; and

**WHEREAS**, McCarty has filed a voluntary petition for annexation of the Property into the City; and

**WHEREAS**, McCarty desires to obtain for the Property the benefits and privileges of inclusion within the boundaries of the City which include the designation of the Property on the City's Future Land Use Map as RM (Residential Medium Density) and the assignment of applicable zoning categories to allow the most appropriate development of the Property and the provision of all services, facilities, and utilities as are available to all residents of the City; and

**WHEREAS**, the City has determined that the Property is concentrated in a single area; and

**WHEREAS**, annexation of the Property will not result in the creation of unincorporated areas being enclosed on all sides by a single municipality or by a singly municipality and a natural or manmade obstacle that allows vehicular access only through unincorporated areas; and

**WHEREAS**, the City has determined that the annexation of the Property into the municipal boundaries of the City would be in the best interest of the City and the future residents of the Property; and

~~(WHEREAS)~~ McCarty desires to enter into this Agreement to memorialize its understanding and agreements with respect to the annexation, development and use of the Property; and

**WHEREAS**, upon McCarty's compliance with its obligations under this Agreement, the development of the Property will be consistent with the City's comprehensive plan and land development regulations; and

**WHEREAS**, McCarty and the City agree that it would be beneficial to the parties to initiate the land use and development approval process prior to the effective date of the annexation to expedite development of the Property.

**NOW, THEREFORE**, in consideration of the mutual promises and other considerations contained herein, the parties hereto agree as follows:

1. **Recitations**. The recitations set forth above are true and correct and are incorporated herein by reference.

2. **Annexation**. On July 8, 2005 McCarty filed a voluntarily petition requesting the City to annex the Property into the municipal boundaries of the City. The City shall take all actions necessary to effect the annexation of the Property in a timely manner in accordance with the procedures set forth in Section 171.044, Florida Statutes, and any other applicable ordinances or regulations. It is the desire of the parties that the annexation be accomplished as rapidly as possible. McCarty agrees to indemnify and defend the City in the event of any lawsuit challenging the legality of the annexation of the Property and City agrees to cooperate with McCarty as may be required in such defense.

3. **Effective Date**. This Agreement shall become effective upon execution by both parties.

4. **Land Use**. McCarty has submitted a request to amend the City's Comprehensive Plan to include the Property and to assign the land use designation of RM (Residential Medium Density) to the Property. The City shall process said application in a timely manner in accordance with applicable statutes, ordinances and other regulations, and subject to paragraph 5 below.

5. **No Waiver of Police Power**. As provided above and otherwise herein, the parties recognize and agree that certain provisions of this Agreement will require the City and/or its boards, departments or agencies, acting in their governmental capacity, to consider certain changes in the City's Comprehensive Plan, zoning ordinances or other applicable City codes, plans or regulations, as well as to consider other governmental actions as set forth in this Agreement. All such considerations and actions shall be undertaken in accordance with established requirements of state statute and City ordinances, including applicable notice and hearing requirements, in the exercise of the City's jurisdiction under the police power. Nothing in this Agreement is intended to limit or restrict the powers and responsibilities of the City in

acting on applications for comprehensive plan changes and applications for other development. The parties further recognize and agree that these proceedings shall be conducted openly, fully, freely and fairly in full accordance with law and with both procedural and substantive due process to be accorded the applicant and any member of the public.

6. **Stormwater.** Notwithstanding any regulations to the contrary, no portion of the Property, nor McCarty, shall be assessed for any stormwater utility assessment until (i) the Property has been platted for urban development, and (ii) the Property is no longer used for agriculture or agricultural related purposes. The parties agree that McCarty shall be responsible for its stormwater permitting and for compliance with all National Pollution Discharge Elimination System rules and regulations. McCarty shall be responsible for the maintenance of its stormwater system. In no event shall the City be entitled to impose or collect stormwater utility fees or assessments allocable to the years 1993 through 1997 against or with respect to the Property.

7. **Utilities.**

a. The City desires to provide municipal utility services to the Property, including water, wastewater and irrigation, and represents that the City has sufficient existing or planned plant capacity to provide same to the Property for those uses which may be developed under the Proposed Land Use. The City acknowledges that McCarty may create one or more Community Development Districts ("CDDs") in accordance with the requirements of Chapter 190, Florida Statutes, to finance and construct utility infrastructure, and to finance, construct, own and maintain other infrastructure, to and for the Property. McCarty shall have no right to own or operate a utility. The City agrees to provide wastewater and potable water service to the Property with a capacity sufficient to accommodate the uses which may be developed under the Proposed Land Use, so long as McCarty pays its fair share of the cost. Pursuant to and consistent with Sections 63.16 and 63.22 of the Code, on or before development of the Property, McCarty shall install, or cause to be installed, at its sole cost and expense, the on-site water and wastewater transmission facilities to service the Property, provided, however, that to the extent such transmission facilities are upsized or looped at City's request to serve additional property other than the Property, the City shall reimburse McCarty for that amount that exceeds its hydraulic share in a manner mutually acceptable to McCarty and the City. The parties agree that upon completion and acceptance by the City of the on-site water and wastewater lines, such lines shall be transferred to the City to be owned and maintained by the City in perpetuity. McCarty and City agree that the location and design of any transmission water or sewer lines and easements for same shall be located in areas mutually agreed upon by the parties.

b. The parties agree to negotiate in good faith to enter into appropriate agreements to ensure that the municipal utility services described above are available and constructed as contemplated herein to serve the Properties. Said agreements shall include, but not be limited to, a developer's agreement which provides for McCarty's hydraulic share contribution and reservation of line and plant capacity.

8. **Impact Fees.** McCarty will not apply to St. Lucie County for any transportation impact fee credits for any portion of the Property that is annexed into the City without authorization from the City. To the extent that the City imposes current or future impact fees

applicable to future development within the Property, including but not limited to those for transportation, parks and schools, the City agrees that it shall provide credit to McCarty against such impact fees assessed for the same purpose, for the value of public improvements constructed by McCarty, for funding contributions to public improvements made by McCarty and for land dedications made by McCarty.

9. **Taxation and Assessments.** The City acknowledges that the Property is used for agricultural purposes and in the past has benefited by a Greenbelt Exemption for ad valorem tax purposes (the so-called "agricultural exception"). The City agrees to support McCarty's receipt of a Greenbelt Exemption for the Property as long as the Property is being used for agricultural purposes or agricultural related purposes prior to non-agricultural development. Further, the City agrees that the Property can be used for agriculture or agricultural related purposes after annexation.

10. **Roadway Improvements.** McCarty agrees to address the impacts of development of the Property on the roadway network as follows:

a. McCarty agrees to participate in a special assessment district or other similar funding mechanism for the improvement of Midway Road from I-95 west to Okeechobee Road and to pay its fair share cost of such improvements.

b. McCarty agrees to pay its fair share costs for the improvements to McCarty Road.

c. If necessary, McCarty will dedicate additional right-of-way along McCarty Road.

11. **Payment of Public Facilities.** In addition to the amount due hereunder from McCarty for utilities set forth in paragraph 7 above, McCarty agrees to pay the City Six Hundred Thirty Six Thousand and no/100 Dollars (\$636,000.00) as consideration to ensure that adequate public facilities (excluding water, wastewater and irrigation) exist to serve the Property and to provide concurrency for development of the Property pursuant to the proposed land use and potential development of up to Five Hundred Thirty (530) residential units. McCarty shall pay the foregoing amount to the City one (1) day prior to the date on which the City holds the public hearing for the second reading of the ordinance annexing the Property into the City (the "Annexation Ordinance"); provided, however, that title to said funds shall not vest in the City unless and until the Annexation Ordinance is approved by the City Council and the Annexation Ordinance becomes effective; provided, further, however, that in the event the Annexation Ordinance is challenged and a court of competent jurisdiction, or arbitration or mediation panel in a binding process, issues an order invalidating the Annexation Ordinance and/or the annexation of the Property, the City agrees to pay Six Hundred Thirty Six Thousand and no/100 Dollars (\$636,000.00) to McCarty within ten (10) days following the date that such order becomes final and non-appealable.

12. **Time of the Essence.** The parties hereto covenant that time is of the essence and each party shall immediately commence all actions necessary to fulfill their respective obligations under this Agreement.

13. **Severability**. If any section, subsection, sentence, clause, phrase or portion of this Agreement is for any reason held invalid or unconstitutional in any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

14. **Successors and Assigns**. The obligations imposed and entitlements created pursuant to this Agreement shall run with and bind the Property as covenants running with the land. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their successors and assigns, heirs and personal representatives; provided, however, that references herein to McCarty shall mean and refer only to McCarty. The obligations of McCarty may be assigned in whole or part to one or more property owners associations and in such event, McCarty shall thereafter be relieved of future obligation for such assigned obligations hereunder.

15. **Attorneys' Fees**. Should any party to this Agreement bring an action against any other party to enforce any provision of this Agreement, the prevailing party in said action shall be entitled to recover its reasonable attorneys' fees and court costs in all trial and appellate proceedings.

16. **Recording**. The City shall record this Agreement with the Clerk of the Circuit Court for St. Lucie County within fourteen (14) days after the City executes the Agreement.

17. **Entire Agreement**. This Agreement contains and sets forth all of the promises, covenants, agreements, conditions and understandings between the parties with respect to the subject matter of the Agreement as of the date hereof.

18. **Headings**. Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement, nor the intent of any provision hereof.

19. **Governing Law**. This Agreement shall be construed and interpreted according to the laws of the State of Florida and venue with respect to any litigation between the parties related to this Agreement shall be St. Lucie County, Florida.

20. **Amendment**. This Agreement shall not be changed, modified or amended except by an instrument in writing and executed by all parties with the same formality and or equal dignity herewith.

21. **Notice**. Any notice required or permitted under this Agreement shall be in writing and shall be deemed to have been given either (i) when delivered in person to the persons designated herein below for that purpose, (ii) upon delivery to an overnight courier (e.g. Federal Express, Airborne) as evidenced by the sender's copy, addressed as set forth herein below; (iii) upon mailing by United States certified mail, return receipt requested, postage paid, to such address. Such notice shall be deemed received, when either (i) delivered in person to the agents designated herein below for that purpose, (ii) on the first business day after delivery to an overnight courier (e.g. Federal Express, Airborne) as evidenced by the sender's copy, addressed as set forth herein below, or (iii) three (3) days after deposited in the United States Mail, by

certified mail, postage prepaid, return receipt requested, addressed to the other party. The addresses of the parties are as follows:

**McCarty:**

McCarty Road, LLC  
Attn: George Kelly  
1935 Commerce Lane  
Jupiter, FL 33458-5858

With required copy to:

Ruden, McClosky, Smith, Schuster & Russell, P.A.  
Attn: Johnathan A. Ferguson, Esquire  
145 NW Central Park Plaza  
Suite 200  
Port St. Lucie, FL 34986

**CITY:**

City of Port St. Lucie  
Attn: Donald B. Cooper, City Manager  
121 S.W. Port St. Lucie Boulevard  
Port St. Lucie, FL 34984

With required copy to:

City of Port St. Lucie  
Attn: Roger Orr, City Attorney  
121 S.W. Port St. Lucie Boulevard  
Port St. Lucie, FL 34984

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature; McCarty signing by and through its duly authorized representative and the City through its City Council, signing by and through its Mayor, authorized to execute the same by City Council action on the 13th day of March, 2006.

CITY OF PORT ST. LUCIE

ATTEST:

Karen A. Phillip  
City Clerk

By: Robert E. Minsky  
Robert E. Minsky, Mayor

Date: 4-19-06

APPROVED AS TO FORM AND CORRECTNESS

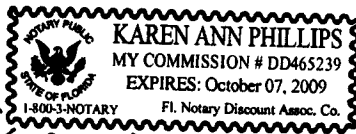
By: Roger Orr  
Roger Orr, City Attorney

McCarty Road, LLC, a  
Florida limited liability company

By: [Signature]  
Print Name: \_\_\_\_\_  
Its: Managing member  
Date: 4/12/2006

STATE OF FLORIDA  
COUNTY OF ST. LUCIE

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of April, 2006, by Robert E. Minsky, as Mayor of the City of Port St. Lucie, a municipal corporation of the State of Florida, on behalf of the City of Port St. Lucie, Florida. He is personally known to me.



Karen Ann Phillips  
Notary Public

STATE OF FLORIDA  
COUNTY OF ST. LUCIE

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of April, 2006, by George T. Kelly IV as managing member of McCarty Road, LLC, a Florida limited liability company, on behalf of the McCarty Road, LLC. He is personally known to me or has produced \_\_\_\_\_ as identification.



**Carolyn King**  
Commission #DD303217  
Expires: Mar 24, 2008  
Bonded Thru  
Atlantic Bonding Co., Inc.

Carolyn King  
Notary Public

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
PID: 3309-323-0001-000-6

The South 1290.46 feet of the Southwest 1/4 lying South of PONY PINES UNIT 1, Section 9, Township 36 South, Range 39 East LESS the East 46 feet for canal right-of-way and LESS the West 98 feet for road and canal right-of-way, St. Lucie County, Florida.

Overall parcel contains 71.532 Acres, more or less.

